Filed 6/2/09 Sheen v. Howell CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

ANTHONY SHEEN, as Trustee, etc., Plaintiff and Appellant, v. CHARLES SHEEN et al., Defendants and Respondents; LESLIE HOWELL et al., Objectors and Respondents; NATHALEE EVANS, Respondent.	B196060 (Los Angeles County Super. Ct. No. BP092979)

APPEAL from an order of the Superior Court of Los Angeles County. Aviva K. Bobb, Judge. Dismissed.

Law Offices of Gregory A. Cole, Gregory A. Cole; Gieleghem Law Office and Neil Gieleghem; Klapach & Klapach and Joseph S. Klapach for Plaintiff and Appellant.

Evan D. Marshall; Law Offices of Marc B. Hankin and Marc B. Hankin for Defendants and Respondents.

Lewis Brisbois Bisgaard & Smith and William John Rea, Jr., for Objectors and Respondents.

Law Offices of Nina R. Ringgold and Nina R. Ringgold for Respondent Nathalee Evans.

* * *

This appeal is from an order denying a trustee's motion to disqualify the attorneys for three trust beneficiaries, on grounds those attorneys were engaged in representation adverse to the trustee, which was conflicting because the attorneys had represented the predecessor trustee in a closely related matter. The trial court denied disqualification on grounds the attorneys had no attorney-client relationship with the present trustee. Because the attorneys have substituted out of their representation of the beneficiaries, the motion to disqualify and the appeal from its denial are moot. We therefore dismiss the appeal.[1]

FACTS

Appellant, Anthony Sheen, is the successor trustee of the Quinlock K. Sheen Living Trust (trust), declared by his grandmother Quinlock Sheen in 1997. The trust provided for distribution of its assets, upon her death, equally among her six adult children, or the issue of any predeceased child. The trust also provided that should

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[1] We rule on pending motions for judicial notice and related relief as follows.

1. Respondent Nathalee Evans's request for judicial notice, filed March 11, 2008, is denied as redundant of the record and otherwise irrelevant.

2. Respondent Charles Sheen et al.'s request for judicial notice, filed March 19, 2009, is granted with respect to exhibits 1 and 2 and is otherwise denied as irrelevant.

3. Respondent Nathalee Evans's motion for judicial notice, filed March 26, 2009, is granted with respect to item 16 (notice of appeal) and is otherwise denied as irrelevant.

4. Respondent Nathalee Evans's motion to strike, for sanctions, and for writ of coram vobis, filed March 26, 2009, is denied.

5. Respondent Leslie Howell et al.'s request for judicial notice, filed April 6, 2009, is granted.

Quinlock Sheen be unable to act as trustee, her daughter Eugenia Ringgold (Ringgold) would succeed her, and if Ringgold could not serve, appellant would become trustee.

Quinlock Sheen died in 2002, rendering Ringgold trustee. In 2005, Ringgold and three other trust beneficiaries – respondents Charles Sheen, Derek Hersha, and Deryl Gaylord (respondents) – filed a petition under Probate Code section 850 (property petition) against Dolores Sheen, another beneficiary and daughter of Quinlock Sheen. The property petition sought to restore to the trust valuable properties, including a Los Angeles house and duplex, which Quinlock Sheen as trustee had deeded to Dolores Sheen in 2001, allegedly by reason of undue influence and unsound mind.

Respondents and Ringgold, as both beneficiary and trustee, were represented by Attorney Leslie K. Howell, initially of the firm McNally & Crowder LLP. An amended petition was filed in 2006, by Howell and the Law Office of Fritzie Galliani, to which she had transferred. (We refer to Howell, Galliani, and the latter's law office as the attorneys.) Both versions of the petition alleged that Ringgold was not only a beneficiary but also the trustee of the trust.

After a trial in 2006, the court sustained the petition, and entered judgment setting aside the deeds to Dolores Sheen, ordering that all of Quinlock Sheen's personal property be returned to the trustee for distribution, and assessing $100,000 compensatory damages for other property taken. This court affirmed that judgment. (*Estate of Sheen* (May 15, 2008, B192495) [nonpub. opn.].) Ringgold, however, died just after the trial court rendered its intended decision. Appellant then became trustee.

In June 2006, the attorneys, representing the respondents, filed a petition to remove appellant as trustee, by reason of breach of the trust and failure to act (Prob. Code, §§ 15642, subds. (b)(1), (b)(4)). Among other things, the petition alleged that appellant had failed to act to evict Dolores Sheen from the duplex, to list the two real properties for sale, and to access Quinlock Sheen's personal property situated at the duplex. In addition, appellant had not collected rents for the duplex, and had failed to "heed the preferences of the beneficiaries" or return phone calls from the respondents.

On August 31, 2006, respondents, again represented by the attorneys, noticed a motion to award the attorneys fees for prosecuting the property petition. Although nominally based on the "common fund" theory, the motion in essence sought to apply to the recovered properties a 40 percent contingent fee, which the respondents had agreed to when they retained the attorneys. (The properties were alleged to be worth at least $2.2 million.) The attorneys noted that appellant opposed this measure of fees, believing instead that the percentage should instead apply only to respondents' share of the recovery.

On the same day, appellant filed the motion to disqualify the attorneys that is the subject of this appeal. Appellant asserted that having represented the trustee (Ringgold) in the property petition, the attorneys could not now represent the respondents adversely to the trustee (appellant), by prosecuting a petition to remove him from office. Appellant also asserted, by declaration, that following Ringgold's death, Attorney Howell had acted as if she were counsel for the trust, "and tried to tell me what to do." In reliance, appellant claimed, he had disclosed confidential information to her.

Respondents' opposition to the motion included a declaration by Howell, who denied having ever represented appellant, either by agreement or by operation of law. She did affirm, however, that in the property petition she had represented Ringgold as trustee as well as beneficiary. The opposition also emphasized that the attorneys' several clients, including Ringgold, had signed consents to joint representation by the attorneys, which acknowledged the potential for conflicts among them. (The consent that Ringgold had signed, however, named respondent Charles Sheen as the consenting party.)

In reply papers, appellant underscored certain letters from Howell by which, he contended, she had given him reason to believe she was acting as counsel for him. For example, on May 19, 2006, Howell had written to Dolores Sheen's attorney, stating that the Sheen trustee required access to the adjudicated real and personal property. In another letter, which distinguished Howell's "clients" from appellant, Howell erroneously advised him that as trustee "[y]ou serve at the pleasure of the beneficiaries,"

and she subscribed the letter as "Counsel in the Matter of the Quinlock Sheen Living Trust."[2]

At the September 25, 2006 hearing, the court's tentative ruling was to grant the motion, because appellant had imparted confidential information to Howell during their initial contact in the spring of 2006. During argument, however, the court repeatedly asked appellant's counsel to state the confidential information appellant had provided. Counsel did not specify any such information. The court took the motion under submission, while granting respondents' motion for attorney fees, the 40 percent of recovery to be borne by the trust.

The court subsequently denied appellant's motion to disqualify, on the basis that "no confidential information was imparted to Howell . . . ." Respondents and the attorneys submitted, and the court signed, a more detailed order, which also stated that the attorneys were not presumed to represent appellant simply by virtue of having represented Ringgold.[3]

The court denied appellant's motion for reconsideration, and appellant filed a notice of appeal. Thereafter, the respondents filed substitutions, replacing the attorneys with another lawyer, who had appeared for respondents on the motion to disqualify.

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[2] The reply also included a February 2006 letter from Howell to another trust beneficiary, who had not joined in the property petition under Howell's representation. Apparently seeking to encourage such joinder, Howell made the following extraordinary statement: "Finally, please be advised that it is possible that you will no longer be eligible to receive your share of the trust estate. The trust estate will be divided between the family members who are the Petitioners [in the property petition]. . . ."

[3] The order also made this questionable finding (actually a mixed finding and conclusion): "To the extent that any communications or information concerning the Trust imparted to [the attorneys] were shared with other Petitioners, Eugenia Ringgold consented to those communications, in her capacity as Trustee and those communications cannot form the basis for a claim of conflict or disqualification."

DISCUSSION

We conclude that this appeal has been rendered moot, by the attorneys' substitution out of the trust proceedings. Appellant thereby achieved the object of his motion, and his appeal: removal of the attorneys from representation of the respondents. No more would be accomplished were we to reverse the order; and were we to affirm it, the attorneys' exclusion would remain.

The posture of this case materially differs from that in *Truck Ins. Exchange v. Fireman's Fund Ins. Co.* (1992) 6 Cal.App.4th 1050, 1056-1059. There a law firm was hired to pursue litigation against an existing client of the firm, which moved to disqualify it. The firm withdrew from representing the existing client, but the court held that that did not satisfy the firm's duty of loyalty. Accordingly, automatic disqualification could not be avoided by "unilaterally converting the present client into a former client prior to the hearing on the motion for disqualification." (6 Cal.App.4th at p. 1057.) The law firm remained subject to disqualification from representing the new client.

Here, however, the attorneys by their own doing no longer represent respondents, which is what appellant originally sought. The basis for appellant's complaint about the ruling below has been rectified, and resolution of that claim would not change the reality of the case. The appeal must be dismissed as moot.[4]

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[4] Nathalee Evans has filed a brief and an appendix in this appeal, ostensibly as trustee of Ringgold's own trust, which is now a beneficiary of the trust. Evans principally contends that because she did not receive notice of the motion to disqualify, the trial court's ruling should be vacated and remanded. This contention is meritless. Even assuming she had standing to do so, Evans did not file a notice of appeal, although the record reflects she was aware of the ruling. Moreover, judicial notice establishes that Evans is not presently the Ringgold trustee, and she has not shown that she is a proper party to this appeal.

DISPOSITION

The appeal is dismissed. Respondents' motion for sanctions and appellant's motion for sanctions are denied. The parties shall bear their own costs on appeal.

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BAUER., J.*

We concur:

RUBIN, Acting P. J.

BIGELOW, J.

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* Judge of the Orange Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.